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7 UNITED STATES OF AMERICA,  
8 Plaintiff,  
9 v.  
10 ESPINOZA-PATINO,  
11 Defendant.

Case No. 12-cr-00833-BLF-1

**ORDER DENYING MOTION FOR  
REDUCTION IN SENTENCE**

[Re: ECF No. 462]

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13 Before the Court is Pro Se Defendant Salvador Espinoza-Patino's motion for a reduction in  
14 sentence pursuant to 18 U.S.C. § 3582(c)(2) and the retroactive amendment made to U.S.S.G.  
15 4A1.1(d) ("Amendment 821"). *See* ECF No. 462. The United States Probation Office issued a  
16 Sentence Reduction Investigation Report ("SRIR") stating that Defendant does not qualify for a  
17 reduction. ECF No. 471. The Government filed a brief opposing a reduction in sentence. ECF  
18 No. 476. The Court invited Defendant to file an optional reply, ECF No. 469, and no reply has  
19 been filed. Defendant is in the custody of the Bureau of Prisons at FCI Oakdale II with an  
20 anticipated release date of September 26, 2032.

21 For the reasons stated below, the Court DENIES the motion.

22 **I. BACKGROUND**

23 Defendant was the leader of a drug trafficking organization ("DTO") involved in  
24 methamphetamine trafficking in California, Georgia, and Canada. ECF No. 293 ("PSR") ¶ 12.  
25 The DEA operation to investigate and arrest the participants in the DTO resulted in one of the  
26 largest seizures of methamphetamine in the United States—over 700 pounds of crystal  
27 methamphetamine with a street value of over \$6,000,000, over \$160,000 in U.S. currency, 10  
28 firearms, and 7 automobiles were seized. *See id.* On February 28, 2013, Defendant was charged

1 in a six-count superseding indictment and was named in Counts 1, 2, 3, 5, and 6. *Id.* ¶ 3. On  
2 October 27, 2014, Defendant pled guilty to all charged counts without a plea agreement. *Id.* ¶¶ 4–  
3 5.

4 Defendant's base offense level was 44, pursuant to U.S.S.G. § 2S1.1. PSR ¶ 67.  
5 Defendant received a two-point enhancement under U.S.S.G. § 2S1.1(b)(2)(B) and a four-point  
6 enhancement under U.S.S.G. § 3B1.1(a) for being an organizer or leader of criminal activity  
7 involving five or more participants. PSR ¶¶ 67, 70. After a three-point reduction for acceptance  
8 of responsibility, Defendant's total offense level was 47. *Id.* ¶ 76. Pursuant to the Sentencing  
9 Guidelines, this offense level was treated as an offense level of 43. *Id.* Defendant had no prior  
10 criminal history, which resulted in a criminal history score of 0 and a criminal history category of  
11 I. *Id.* ¶ 80. The guideline range for an offense level of 43 and criminal history category of I is life  
12 imprisonment. *Id.* ¶ 102. On May 15, 2015, the Court sentenced Defendant to a custodial term of  
13 276 months followed by a term of 5 years of supervised release. ECF No. 295.

14 **II. LEGAL STANDARD**

15 If a defendant was “sentenced to a term of imprisonment based on a sentencing range that  
16 has subsequently been lowered by the Sentencing Commission, . . . the court may reduce the term  
17 of imprisonment after considering the factors set forth in section 3553(a) to the extent that they are  
18 applicable, if such a reduction is consistent with the applicable policy statements issued by the  
19 Sentencing Commission.” 18 U.S.C. § 3582(c)(2). The Supreme Court has established a two-step  
20 approach for determining whether a sentencing reduction may be granted under § 3582(c)(2). *See*  
21 *Dillon v. United States*, 560 U.S. 817, 827 (2010). First, the Court must follow the Commission’s  
22 instructions in U.S.S.G. § 1B1.10 to determine the prisoner’s eligibility for a sentence  
23 modification and the extent of the reduction authorized. *Id.* Under § 1B1.10, the Court must  
24 determine the amended guidelines range that would have been applicable had the relevant  
25 amendment been in effect at the time of the initial sentencing. *Id.* Section 1B1.10 limits any  
26 reduction in sentence such that the Court may not reduce a sentence to a term “less than the  
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1 minimum of the amended guideline range.”<sup>1</sup> U.S.S.G. § 1B1.10(b)(2)(A). At the second step, the  
2 Court considers the applicable § 3553(a) factors. *Id.*

3 Amendment 821 to the Sentencing Guidelines became effective on November 1, 2023 and  
4 Parts A and B may be applied retroactively. *See* U.S.S.G. § 1B1.10(a)(1), (d). Part B of  
5 Amendment 821 added a provision to the Sentencing Guidelines that provides for a 2-level  
6 reduction to a defendant’s offense level for certain defendants that meet all of the following  
7 criteria:

- 8 (1) the defendant did not receive any criminal history points from  
9 Chapter Four, Part A;
- 10 (2) the defendant did not receive an adjustment under § 3A1.4  
(Terrorism);
- 11 (3) the defendant did not use violence or credible threats of violence  
in connection with the offense;
- 12 (4) the offense did not result in death or serious bodily injury;
- 13 (5) the instant offense of conviction is not a sex offense;
- 14 (6) the defendant did not personally cause substantial financial  
hardship;
- 15 (7) the defendant did not possess, receive, purchase, transport,  
transfer, sell, or otherwise dispose of a firearm or other dangerous  
weapon (or induce another participant to do so) in connection with  
the offense;
- 16 (8) the instant offense of conviction is not covered by § 2H1.1  
(Offenses Involving Individual Rights);
- 17 (9) the defendant did not receive an adjustment under § 3A1.1 (Hate  
Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious Human  
Rights Offense); and
- 18 (10) the defendant did not receive an adjustment under § 3B1.1  
(Aggravating Role) and was not engaged in a continuing criminal  
enterprise, as defined in 21 U.S.C. 848;

20 U.S.S.G. § 4C1.1(a) (Nov. 1, 2023).

### 21 **III. DISCUSSION**

22 Defendant argues only that the Court should grant a sentence reduction under Part B of  
23 Amendment 821. ECF No. 462 at 4. However, the Court finds that Defendant does not qualify  
24 under Part B. A defendant is ineligible for a reduction under Part B if the defendant “receive[d] an  
25 adjustment under § 3B1.1 (Aggravating Role).” U.S.S.G. § 4C1.1(a)(10). Here, Defendant

27 <sup>1</sup> This limitation has one exception that is not applicable here: where the Court originally imposed  
28 a sentence below the guidelines range “pursuant to a government motion to reflect the defendant’s  
substantial assistance to authorities, a reduction comparably less than the amended guideline range  
... may be appropriate.” U.S.S.G. § 1B1.10(b)(2)(B).

1 received an adjustment under § 3B1.1. PSR ¶ 70. Moreover, even if Defendant was eligible for a  
2 two-level reduction to his offense level under Part B, the Court could not reduce Defendant's  
3 sentence. A two-level reduction in Defendant's offense level would make his offense level 45,  
4 which is treated as level 43 and has a guideline range of life imprisonment. *See id.* ¶ 76.  
5 Defendant's sentence of 276 months is already below the minimum of the amended guideline  
6 range, so the applicable law does not permit the Court to reduce Defendant's sentence. *See Dillon*,  
7 560 U.S. at 827; U.S.S.G. § 1B1.10(b)(2)(A). Thus, the Court finds no basis to reduce Defendant's  
8 sentence under Part B of Amendment 821, and Defendant's motion is DENIED.

9 **IV. ORDER**

10 For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's motion for a  
11 reduction in sentence under Amendment 821 (ECF No. 462) is DENIED.

12  
13 Dated: April 22, 2024

14   
15 BETH LABSON FREEMAN  
16 United States District Judge

United States District Court  
Northern District of California